

CENTRAL DISPLACEMENT TRIBUNAL
AMERIAKA BANGLA

C.A.No./T.A.No. 331 of 1992

DATE OF L. SUBM. 18.7.96

-- Sukhbir Kumar --

-- APPLICANT (S)

Sri Kailash Chandra

Sri A. K. Chaw

AVOCATE FOR THE

APPLICANT (S)

VENUE

* * * C.O.I. 8000

-- RESPONDENT(S)

-- Sri N. B. Singh --

-- AVOCATE FOR THE
RESPONDENT(S)

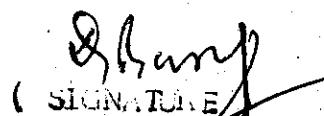
SOHAM

The Hon'ble Mr. D. S. Rayya - Vice Chairman
Member (A)

The Hon'ble Mr. --

-- Member ()

1. whether Reporters of local newspapers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. whether their Lordships wish to see the fair copy of the judgments?
4. whether to be circulated to all other Bench?


(SIGNATURE)

A. Mehrotra/-

(9)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Allahabad this the 18/5 day of July 1996.

Original application No. 331 of 1992.

Hon'ble Mr. D.S. Bawejia, AM

Sudhir Kumar, S/o Shri Kailash Chand,
R/o Qr. No. G-9, Hathibarkala Estate,
Dehradun, at present working as Typo-
grapher grade II in the Map Publication
Directorate, Survey of India, Dehradun.

..... Applicant.

C/A Sri Kailash Chandra
Sri A.K. Gaur

Versus

1. Union of India through the Secretary, Govt. of India, M/o Science and Technology, Technology Bhavan, New Mehrauli Road, New Delhi.
2. Surveyor General of India, Survey of India, Hathibarkala, Dehradun.
3. Dy. Director, (The Estate Officer), Hathibarkala Estate, Map Publication Directorate, Survey of India, Dehradun.
4. Shri K.S. Panwar, Superintending Surveyor, A.D.M.P., Map Publication Directorate, Survey of India, Dehradun.

..... Respondents.

C/R Sri N.B. Singh

ORDER

Hon'ble Mr. D.S. Bawejia, AM

This application has been filed praying for quashing of letter dated 19.2.92 wherein the request of the father of the applicant for out of turn allotment of residential quarter in the name of the applicant on retirement of his father has been rejected.

Contd...2...

2. The brief facts of the case narrated by the applicant are as follows. The father of the applicant while working as Establishment and Account's Officer in Northern Circle of Survey of India, Dehradun was allotted a residential quarter no. G-9 which was occupied by the father of the applicant on 15.11.88. The father of the applicant retired from service on 31.5.90. The applicant was also posted at Dehradun and ~~working~~ ^{working} as Typographer grade III in Map Publication Directorate of Survey of India. After the occupation of the quarter by his father, he also started living with his father and he also intimated to this effect to the concerned authority. The applicant also ceased to draw House rent allowance, which was otherwise admissible to the applicant. The applicant's father vide application dated 19.7.90 requested Additional Surveyor General Map Publication Directorate, Survey of India for retention of quarter for a period of four months after retirement. Subsequently vide application dated 12.9.90 addressed to Director Map Publication, he requested for out of turn allotment of residential quarter in the name of his son i.e. applicant as per the extant rules. However father of the applicant vide letter dated 10.10.90 was advised that his son i.e. the applicant does not fulfil all the conditions laid down for 'out of turn' allotment and therefore the allotment of the said quarter in the name of his son cannot be done. Thereafter he made a representation to the higher authority in the form of an appeal and the same was also rejected vide letter dated 19.2.92 which has been impugned in this application.

3. The applicant's case is that refusal of

Contd...3...

'out of turn' allotment of the residential quarter in the name of his son i.e. the applicant is not based on the correct interpretation of the Rule No. 317-A-17-9 read with Rule No. SR 317-AH-24. The relaxation of rules is permitted under Sub Rule SR 317-AH-24 and in certain cases quoted in the application, the relaxation of the conditions has been allowed. It is discriminatory not to exercise this power of relaxation in the case of the applicant. The refusal to allow the residential quarter to the applicant is therefore violative of Articles 14 and 16 of Constitution of India.

4. The respondents have filed counter reply and rejoinder to the same has been filed by the applicant.

5. In the counter affidavit, the respondents while admitting the facts brought out above by the applicant have submitted that 'out of turn' allotment in the name of the applicant cannot be allowed as the condition of sharing of accommodation for three years before superannuation laid down as per Rule No. 317-AH-9 (i) for out of turn allotment on retirement ~~are~~ not complied with. The applicant wrongly informed vide his application dated 27.6.89 that he was residing with his father in the quarter No. G-9 from the date of allotment i.e 15.11.88 (Annexure-CH-2). In fact on enquiry it was revealed that he was staying at a different place at 20, Bengali Mohalla, ^{Kanpur} Dehra Dun upto Summer 1990 as per the address given in the leave application from 2.12.87 to 4.12.87 and 7.12.87 to 9.12.87 and also in the reply dated 22.4.91 given to the letter dated 12.4.91 issued by Director Map Publication. He has been drawing the House rent allowance upto June 89 and

thereafter in order to put claim for allotment of house on out of turn basis, he refunded the House rent allowance. Refundings is not permissible as per the rules of the Government (Annexure-C-5 and 6). Respondents also submit that it is also wrong to say that the rules have not been properly appreciated. The respondents No. 2 and 3 are not vested with the power to relax any of the provisions of these rules and therefore as desired by the applicant's father, his appeal was referred to the respondent No. 1 who is the competent authority to exercise powers for relaxing the rules under Rule No. 317-H-24. However the competent authority rejected the appeal by order dated 19.2.92. With regard to other allegations of vindictive attitude of higher authorities, the respondents have averred that the same are denied. Respondent No. 4 in rejecting the allotment has performed his normal official function according to the relevant rules. Therefore the denial of out of turn allotment does not constitute hostile attitude and violative of Articles 14 and 16 of the Constitution of India.

5. We have heard the learned counsel for the applicant and the respondents. We have also gone through the material placed on the record.

6. Based on the rival contentions the short question which required to be determined is whether the applicant is entitled for out of turn allotment on the retirement of his father of the house occupied by his father as per the extant rules laid down. Both the respondents as well as applicant have referred to SR 317-AH-9 (i) and SR 317-AH-24 as the relevant rules. Rule SR 317-AH-9 (i) reads as under :-

" The allotment of the residence may be made by the Director to the son or daughter or wife/husband or father or mother of a Government servant in occupation of Government residence, who superannuates from or dies while in Government service, provided that the said relative is himself/herself a Government servant employed in the Survey of India and CPAO/RPAO or secures an appointment therein within 12 months of the death, in harness of the Government servant and had stayed with the Government servant who superannuates or dies while in service, for a minimum period of 3 years immediately prior to the date of such superannuation or death. He/She may be allotted the same residence which the allottee was occupying if he/she is also eligible for the same type or higher type of residence, in other cases, he/she may be allotted the Type of residence to which he/she is actually eligible provided that such a residence is vacant and that in case such a residence is not vacant he/she may be allotted a residence immediately next below type if this is acceptable to him/her."

As per this rule, in case of superannuation, 'out of turn' allotment can be allowed provided the sharing of accommodation was being done for a minimum period of three years immediately prior to date of superannuation. In the instant case the quarter was occupied by the father of the applicant on 15.11.88 and he superannuated on 31.5.90. It is averred by the applicant that after occupation of the residence quarter G-9 by his father, he started living with his father and the intimated to this effect to all the concerned authorities about taking up of residence of his father. However this has been controverted by the respondents by bringing on record the letter from the applicant dated 27.6.89 (CA-2 of the counter) wherein it is indicated by the applicant that he is residing with his father since 15.11.88 but at the sametime drawing House rent allowance. The respondents have also stated that in his leave application submitted

for the period in December 87, he had indicated his residence at 20, Bengali Mohalla ^{to} Kanpur. On enquiry it was also found that the applicant continued to stay there till December 1990. The respondents have also averred that father/mother of the applicant is also owing a house at Dehra Dun. With these averments, the respondents have tried to establish that the applicant was not staying with his father. We are not going into the merit of these contentions. Even if it is presumed that the son started living with his father from the date of occupation of house on 15.11.88, still the requirement of minimum three years of stay before superannuation is not fulfilled as the father had retired on 31.5.90. Therefore the stipulation in SR 317-AH-9 (i) ~~are~~ not complied with. In fact in his own representation addressed to Secretary to the Government of India at CA-11 of the counter affidavit, the father of the applicant concedes that 'out of turn' allotment under Rule SR-317-AH-9 (i) is not admissible and requested to consider his case by relaxing the rules under Rule No. SR 317-AH-24. The applicant has made this submission for relaxation of rules in his case quoting a few instances where such relaxation had been earlier given. The respondents have however refuted the same stating that the cases quoted are distinguishable from the case of the applicant without furnishing the details. Even presuming that the discretionary power of relaxing rules was exercised in few cases listed by the applicant for out of turn allotment the same cannot be the ground for seeking relaxation in his case also. Each case has to be decided by the competent authority on its own merits. In this case the applicant had made an appeal to the competent authority to consider his case under Rule SR 317-AH-24 and the same

has been also turned down vide order dated 19.2.92 which has been impugned.

7. From the above discussion, it is clear that the applicant's case is not covered by the Rule SR 317-AH-9 (i) for out of turn allotment on the retirement of his father as the condition of three years minimum living before superannuation is not met with. It is for the competent authority to consider relaxation of the rules on merits ^{merit} in each case. I am unable to find any case of discrimination in not exercising the power of relaxations of rules in case of applicant's father.

8. In light of the above discussions, I do not find any merit in the application and the same is dismissed with no order as to costs.

Arvind
Member - A

Arvind.